

## **REMARKS**

### **State of the Claims**

Claims 1, 3-6 and 17-20 are pending. Claim 4 has been canceled without prejudice. Claims 1 and 17 have been amended to reflect a new range of average projected area for Applicants' snack pieces. No new matter has been added. Support for the amendments can be found in Applicants' specification at page 12, lines 29-30.

### **Information Disclosure Statement**

In the office action, the Examiner states that the information disclosure statement fails to comply with the provisions of 37 CFR §§ 1.97, 1.98 and MPEP § 609 because the non-patent literature references do not disclose a publication date. The Examiner further states that in order to speed along prosecution, it will be assumed that the publication dates of these references (namely, the snack samples provided by Applicant and listed in his Table 1 of the specification) were sometime before the filing date of this application since they are described in the specification. The Examiner further notes that this would equate to either 35 U.S.C. § 102(a) or 102(b) publication dates--"In order to speed prosecution, both rejections will be made." The Examiner concludes by stating the following: "[a]t the very least, applicant can provide the date on which these samples were bought, or obtained.

Applicants respectfully disagree with the Examiner's assertions for all of the reasons that have been enunciated in previous responses on this issue. However, Applicants shall endeavor to search internally within Assignee's records as to the acquisition dates of both products mentioned above. Upon such discovery, Applicants will re-file a supplemental IDS that sets forth those dates in accordance with the Examiner's instructions.

### **35 U.S.C. § 112 Rejection**

Claims 17-20 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicants regard as their invention. Specifically, the Examiner states that Claim 17

recites "a plurality of snack pieces" as well as "a chip to dip condiment net weight ration less than 2". The Examiner states that it is not clear whether the chips are the same components as the snack pieces.

Applicants have amended Claim 17 to remove the attendant discrepancy between the terms "snack pieces" and "chip". The term "chip" has been replaced with the term --snack pieces--. No new matter has been added, and the change is fully supported by the specification; i.e., Applicants use the terms "chip" and "snack piece" interchangeably throughout the specification.

Therefore, Applicants respectfully request reconsideration and allowance of Claims 17-20 over the Examiner's 35 U.S.C. § 112, second paragraph, rejection.

#### 35 U.S.C. § 103 Rejection

Claims 1, 3 and 17-19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Snack-A-Dip in view of Yan Yan Snacks Meiji.

Claim 1 has been amended to reflect a new range for the average projected area, namely, from about 1900 mm<sup>2</sup> to about 10,000 mm<sup>2</sup>. The Examiner states in the office action noted herein that the average projected area of the Snack-a-Dip snack pieces is about 1431 mm<sup>2</sup>. Clearly, this average projected area is below and outside of Applicants' range. Also, the combination of Snack-A-Dip in view of Yan Yan Snacks Meiji does not teach or suggest Applicants' range of average projected area.

Therefore, Applicants respectfully request reconsideration and allowance of Claims 2-3 and 17-19 over the Examiner's 35 U.S.C. § 103(a) rejection.

Claims 5 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Snack-A-Dip in view of Yan Yan Snacks Meiji and further in view of Bezek, et al. (U.S. Patent No. 6,472,007).

Applicants have amended 1 to reflect a new average projected area range from about 1900 mm<sup>2</sup> to about 10,000 mm<sup>2</sup>. The combination of Snack-A-Dip in view of Yan Yan Snacks Meiji and further in view of Bezek '007 does not teach or suggest Applicants' average projected area range.

Applicants therefore respectfully request reconsideration and allowance of Claims 5 and 20 over the Examiner's 35 U.S.C. § 103(a) rejection.

Claims 4 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Snack-A-Dip in view of Yan Yan Snacks Meiji and further in view of Tostitos Chips & Salsa.

Applicants assert that the combination of Snack-A-Dip, Yan Yan and Tostitos Chips & Salsa does not teach or suggest Applicants' invention. First, the references do not teach or suggest Applicants' range of average projected area to be between about 1900 mm<sup>2</sup> and about 10,000 mm<sup>2</sup>. Applicants contend that without such teaching or suggestion, the combination of references cannot be said to provide a prima facie case of obviousness against Applicants' invention.

Thus, Applicants respectfully request reconsideration and allowance of Claims 4 and 6 over the Examiner's 35 U.S.C. § 103(a) rejection.

**SUMMARY**

The rejection in the Office Action has been discussed and, Applicants believe, the proper amendments have been set forth to address the rejection.

In light of both the amendments and the discussions contained herein, Applicants respectfully request reconsideration of the rejection and its withdrawal.

Issuance of a Notice of Allowance at an early date is earnestly solicited.

Respectfully submitted,

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